jury might fairly have inferred from the evidence that the damage was caused by defendant's negligent failure to feed and water the stock during their journey, the court was bound to so conclude on demurrer to the evidence.

[Ed. Note.—For other cases, see 4 Va-W. Va. Enc. Dig. 524.]

Error to Corporation Court of Danville.

Action by Finley & Seymour against the Southern Railway Company. Judgment for plaintiffs, and defendant brings error. Affirmed.

Withers, Brown & Leigh, of Danville, for plaintiff in error.

P. J. Hundley and *W. H. Rogers,* both of Danville, for defendants in error.

CITY OF RICHMOND *v.* ROSE.

March 18, 1920.

[102 S. E. 561.]

1. Municipal Corporations (§ 763 (1)*)—Required Only to Exercise Care to Keep Sidewalk in Reasonably Safe Condition.—A municipality is not an insurer against accidents on its sidewalks, but is liable only for its failure to use ordinary care under the circumstances to keep the sidewalk in a reasonably safe condition for ordinary travel by persons using due care, and a defect in the walk is not actionable, unless it is such as might reasonably be presumed to be dangerous.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 901.]

2. Municipal Corporations (§ 806 (2)*)—Pedestrian Need Not Look for Defects in Walk.—Ordinary care does not require that pedestrian, using a city sidewalk, shall inspect it for defects, or be on the lookout for defects or obstructions; but he may act on the assumption that the walk is in a reasonably safe condition, unless the danger is so obvious that it would be apparent to an ordinarily prudent person.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 916, 917.]

3. Municipal Corporations (§ 791 (1)*)—Must Inspect Sidewalk for Dangerous Irregularities.—A municipality is charged with the duty of reasonable inspection of its sidewalks, and is held to have knowledge of defects which such an inspection would disclose.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 903, 904, 905.]

4. Municipal Corporations (§ 821 (6)*)—Whether Defect in Sidewalk Is Actionable Is Ordinarily a Jury Question.—Whether a de-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fect or obstruction in a sidewalk was such as to give a right of action to a person injured thereby is ordinarily a jury question, since it is a complicated question of fact, involving the height of the obstruction, its appearance to pedestrians, and the peril which might have been anticipated by the city by the exercise of reasonable forethought.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 925, 927.]

5. Trial (§ 156 (3)*)—On Demurrer to Evidence, Facts Which Jury Might Find against Demurrant Are Considered as Found.—In ruling on a demurrer to the evidence, facts as to which reasonable minds might differ under the evidence might be found by the jury against demurrant, and therefore must be considered by the court as having been so found.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 522, 524.]

6. Municipal Corporations (§ 821 (6)*)—Defect in Sidewalk Held Not in Law Too Slight to Be Actionable.—An irregularity in sidewalk, causing the elevation of a section thereof to a height of two inches at one edge and half an inch at the other edge above the rest of the walk, and which to a casual glance appeared like an ordinary expansion joint in the walk, held not so slight a defect that it was not actionable as a matter of law and the city was not entitled to judgment on demurrer to the evidence.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 907, 908, 909.]

7. Municipal Corporations (§ 768 (1)*)—Whether Sidewalk Defective Depends on Circumstances.—Whether a defect in a city sidewalk is such as to give one injured thereby a right of action for damages depends on the particular circumstances of each case.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 907, 908.]

8. Municipal Corporations (§ 821 (5)*)—Defect Not Reasonably Dangerous Does Not Warrant Verdict against City.—Where the defect in a sidewalk is so slight that the minds of reasonable men would not differ in the conclusion that it was not dangerous to travel in the ordinary modes by persons using due care, a verdict against the municipality cannot be sustained.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 927, 928.]

9. Municipal Corporations (§ 806 (1)*)—Must Anticipate Use of Sidewalk in Ordinary Circumstances.—A city is bound to anticipate that its sidewalks will be used by pedestrians under circumstances which ordinarily may occur, so that their attention may be directed away from the obstruction as they approach it.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 898.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

10. Municipal Corporations (§ 768 (1)*)—City Cannot Avoid Liability because Defect Was Obvious.—A city cannot avoid liability for injuries caused by defective sidewalk, on the theory that the defect was not actionable, because it was so obvious, since that would allow the municipality to defend by setting up own wrong.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 917, 918.]

11. Municipal Corporations (§ 806 (2)*)—Pedestrian at Crossing Must Exercise Greater Care than on Sidewalk.—A pedestrian, passing over a street crossing, may more reasonably expect obstructions there, and should exercise greater care than upon the sidewalk, strictly so called.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 921.]

12. Municipal Corporations (§ 821 (25)*)—Mere Size of Detect Does Not Establish Contributory Negligence.—The court cannot hold as a matter of law, from the mere size of a defect in sidewalk, that a pedestrian was contributorily negligent, since that issue involves also all the circumstances surrounding plaintiff at the time, and her conduct in the light thereof.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 927, 928.]

13. Municipal Corporations (§ 821 (25)*)—Pedestrian Held Not Contributorily Negligent as a Matter of Law.—Where a pedestrian fell over a slight raise in a sidewalk, otherwise smooth, after her attention had been diverted by an acquaintance passing in the street, and when the light and shadow on the walk was such that it might have rendered the defect inconspicuous, the court cannot say as a matter of law that plaintiff was contributorily negligent.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 916, 927.]

14. Municipal Corporations (§ 821 (20)*)—Contributory Negligence Depends on Circumstances and Is Ordinarily for Jury.—Whether a pedestrian, injured by a defect in the sidewalk, exercised ordinary care, depends on the surrounding circumstances and the danger reasonably to be apprehended, and even if the facts are uncontroverted the question is one for the jury, if different minds may draw therefrom different conclusions.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 925.]

15. Municipal Corporations (§ 817 (3)*)—Burden of Proving Contributory Negligence Is on Defendant.—In an action for damages for injuries to a pedestrian, occasioned by a defective sidewalk, the burden of showing contributory negligence of plaintiff is on defendant, unless it affirmatively appears from plaintiff's evidence.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 926.]

Prentis, J., dissenting.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Law and Equity Court of City of Richmond.

Action by Martin S. Rose against the City of Richmond. Judgment for plaintiff, and defendant brings error. Affirmed

H. R. Pollard, of Richmond, for plaintiff in error.

Fulton & Wicker, of Richmond, for defendant in error.

CHESAPEAKE & POTOMAC TELEPHONE CO. OF VIRGINIA *v.* CARLESS.

March 18, 1920.

[102 S. E. 569.]

1. Telegraphs and Telephones (§ 67 (1)*)—Compensatory Damages Held Recoverable for Physical Hardship and Inconvenience from Discontinuance of Service.—In an action by a nurse for damages for wrongful discontinuance of telephone service, resulting in one instance in physical hardship of exposure to cold for several hours, and in inconvenience and annoyance in the conduct of her calling, compensatory damages held properly allowed, although the evidence failed to affirmatively show actual pecuniary loss.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 183, 184.]

2. Damages (§ 184*)—Absolute Certainty in Proving Quantum Not Required.—Where the existence of a loss is established, absolute certainty in proving its quantum is not required.

[Ed. Note.—For other cases, see 17 Va-W. Va. Enc. Dig. 278.]

3. Telegraphs and Telephones (§ 67 (1)*)—Annoyance Held Proper Matter for Jury's Consideration in Fixing Damages from Discontinuance of Service.—In an action by a nurse for damages for wrongful discontinuance of telephone service, where there was proof of physical discomfort by being exposed to cold weather in an unheated station for several hours, and inconvenience in her business, the additional injury suffered by her from annoyance, when considered as mental in its character only, was proper matter for the consideration of the jury in fixing damages.

[Ed. Note.—For other cases, see 13 Va-W. Va. Enc. Dig. 183, 184.]

Error to Circuit Court of City of Norfolk.

Action by J. B. Carless against the Chesapeake & Potomac Telephone Company of Virginia. Judgment for plaintiff, and defendant brings error. Affirmed.

Loyall, Taylor & White, of Norfolk. for plaintiff in error.

B. A. Banks, Tazewell Taylor, and *E. S. Merrill,* all of Norfolk, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.